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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re M.M., a Person Coming Under the  
Juvenile Court Law.

B210066

(Los Angeles County  
Super. Ct. No. CK66701)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ROSA C. et al.,

Defendants and Appellants.

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Steven L. Berman, Juvenile Court Referee. Affirmed.

Eva E. Chick, under appointment by the Court of Appeal, for Defendant and  
Appellant Rosa C.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Defendant and  
Appellant Gary M.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County  
Counsel, and Denise M. Hippach, Associate County Counsel, for Plaintiff and  
Respondent.

Rosa C. (mother) and Gary M. (father) are the parents of M.M. (born in October 2006, hereinafter referred to as M.). They appeal the orders of the juvenile court terminating their parental rights. Mother also appeals the order terminating reunification services and denying her Welfare and Institutions Code section 388 petition.<sup>1</sup> Father argues that if mother's parental rights are reinstated, his must be as well. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Mother and father are not married and do not live together. Mother has two older children, M.T. and J.T. When M. was born, she tested positive for narcotics. She and M.T. (then 16 years old) were placed with J.T. (an adult) for a few months, then released to mother in January 2007 pursuant to a voluntary family maintenance agreement. During a home visit by the Department of Children and Family Services (the Department), mother told the social worker that father had domestic violence issues. Mother said he came to the home, kicked in the door, and tried to take M. Mother acknowledged that she and father were gang members.

On January 23, 2007, the Department filed a petition pursuant to section 300, subdivisions (a) and (b). It alleged that in July 2006, father hit and dragged mother when she was pregnant with M. and that in December 2006, father pushed mother to the ground in M.'s presence. The Department filed an amended petition shortly thereafter, alleging mother's history of narcotics use and M.'s positive drug tests at birth.

When the social worker and police went to mother's home to detain M., M. was not there and mother refused to disclose her whereabouts. M. was subsequently located and placed in foster care. The court ordered reunification services for the parents.

On March 21, 2007, after hearing testimony, the juvenile court sustained the petition. The court found that mother lacked credibility, especially when she spoke about

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All further statutory references are to the Welfare and Institutions Code.

her past drug abuse. Eventually, although it is not clear from the record when this occurred, M. and M.T. were once again placed with their older sibling, J.T.

In June 2007, J.T. reported to the Department that M.T. had taken M. M. remained missing for eight months. The social worker made several attempts to contact mother but had difficulty reaching her. Mother was uncooperative when interviewed. Mother denied knowing the whereabouts of the children but admitted that she had talked to M.T. on the phone. During other conversations with the social worker, she said she thought M.T. and M. were in Mexico, but did not check because “it’s not my job.” The paternal grandmother (PGM) and the police believed that mother knew where M. was.

In November 2007, mother testified that she had a telephone conversation with M.T., who said he no longer had M. Mother did not ask him where M. was. She denied knowing where M. was staying.

At the 12-month review hearing in January 2008, mother was not present. Father explained he was unable to comply with his case plan because he was incarcerated. Reunification services for both parents were terminated.

M.T. was arrested on January 23, 2008, on an unrelated charge. M. was not with him. On January 28, a police detective located M. with mother at an address in Inglewood. Mother admitted she was hiding M. from the Department because she did not want her to go into the foster care system. Mother also claimed she was hiding from father. The detective did not detain M., as he felt he had no reason to.

In February 2008, mother and M. were located by a district attorney investigator at a shelter in Los Angeles. M. was brought to a Department office. Her hair was matted, she was dehydrated, and appeared to be suffering from a fever. M. was placed in a foster home and mother was arrested.

Mother filed a section 388 petition in March 2008, requesting that M. be placed with mother’s pastor’s wife. She cited no new evidence or change of circumstances. She merely stated that, “I know that under the [circumstances] I [probably] don’t [deserve] a second chance but I love my kid[s] very much and I wouldn’t have taken my baby [M.] if I didn’t feel threatened so here I stand throwing myself [at] the mercy of the court and

asking for a second chance and asking you if you [were] in my place would you just give up your child or . . . would you have [run] like me?”

The court summarily denied the petition.

From May through July 2008, M. did well in her foster home, and called her foster parents “Mommy” and “Daddy.” Mother and PGM shared monitored visits once a week. M. cried before and after visits. The social worker reported that during visits mother was sometimes awkward and inappropriate with M.

On July 14, 2008, mother filed a second section 388 petition, requesting that the court reinstate reunification services, liberalize visits, or return M. to her custody. Attached to her petition were certificates of completion for gang intervention, domestic violence, anger management, and parenting classes.

At the section 366.26 hearing held on July 17, 2008, father argued that M. should be placed with PGM, claiming that PGM had nothing to do with M.’s disappearance. The court found that the Department had provided reasonable services and the appropriate permanent plan was adoption. It set the matter for a contested hearing. Mother’s second section 388 petition was denied.

At the July 29, 2008 hearing, mother testified that when M.T. was arrested, M. stayed with her for two weeks. She claimed to have had no contact with M. between the time M. disappeared and M.T. was arrested. She testified that M. called her “Mommy” and cried whenever monitored visits were over. Mother said she had been clean and sober for two years and was attending drug testing and individual counseling.

The court found by clear and convincing evidence that M. was adoptable, noting that there was a family with an approved home study ready to adopt her. It commented that mother had failed to voluntarily turn M. over to the Department after M.T. was arrested and believed that mother “probably had the child all along.” The court determined that mother had failed to comply with several aspects of her case plan and pointed out that she did not progress beyond monitored visits. It terminated parental rights. This appeal followed.

## **DISCUSSION**

### **I. Order Setting the Section 366.26 Hearing**

On January 17, 2008, the court set a section 366.26 hearing for May 15, 2008. Neither parent was present, and M.s' and M.T.'s whereabouts were unknown. Mother did not seek review of the court order at that time.

An order denying reunification services and setting a section 366.26 hearing may only be reviewed by a writ petition. (*In re Athena P.* (2002) 103 Cal.App.4th 617, 625.) California Rules of Court, rule 5.600 requires that within 24 hours of the hearing during which the section 366.26 hearing is set, the court must mail notice of the writ petition requirement to the last known address of any party who was not present at the hearing. Failure to give this notice relieves the party of the requirement of contesting a nonappealable dispositional order by writ petition. (*Ibid.*) Mother contends that she may seek review of the order setting the section 366.26 hearing on appeal because the clerk sent the notice to the wrong address.

The January 2008 notice was mailed to the 102nd Street address. In July 2007, mother's recorded address was the 82nd Street address. At a hearing in September 2007, mother gave her address as the 102nd Street address. At a hearing in October 2007, PGM testified that the 102nd Street address was mother's friend's address. But in November 2007, the Department had a meeting with mother at the 102nd Street address, and she did not claim to live elsewhere.

We find that the court gave mother proper notice of the requirement that she seek review of the order setting the section 366.26 hearing by filing a writ petition. She has forfeited her right to appellate review.

### **II. Denial of Mother's Section 388 Petition**

Mother contends that the court erred in denying her second section 388 petition without holding a hearing. She argues that she set forth a prima facie case that a change in the order was in M.'s best interests. Mother asserts that she provided completion

certificates for several classes and programs, had appropriate visits with M., cooperated in the court's efforts to locate M., and showed that M. had bonded with her.

“Section 388 permits a parent to petition the court on the basis of a change of circumstances or new evidence for a hearing to change, modify or set aside a previous order in the dependency. The parent bears the burden of showing both a change of circumstance exists and that the proposed change is in the child's best interests.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) If the petition indicates any evidence that a change would promote the best interests of a child, the court must order a hearing. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 461.) We review the summary denial of a section 388 petition for abuse of discretion. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310; *In re Aaron R.* (2005) 130 Cal.App.4th 697, 705.)

Mother failed to present any evidence that a change in the court's order terminating reunification services would be in M.'s best interests. Mother argues that “[s]he had . . . provided a home for [M.] where she believed [she] was thriving in her care.” However, she testified that after M.T. was arrested, M. stayed with her for only two weeks. Mother explicitly denied having any other contact with M. while M.T. allegedly had her. After M. was returned to the Department's custody, mother's contact with her was limited to weekly monitored one and a half-hour visits. In contrast, M. was living in a stable home with foster parents who were willing and qualified to adopt her. The court did not abuse its discretion in determining that turning the clock back to provide mother with additional reunification services was not in the child's best interests.

### **III. Order Terminating Parental Rights**

Mother contends that she has maintained regular, loving, and persistent contact with M. and that M. is bonded with her. She argues the court should have applied the contact and benefit exception set forth in section 366.26, subdivision (c)(1)(B)(i). We disagree.

If the court finds that the child should remain out of the custody of the parent and has terminated reunification services, the court shall terminate parental rights unless the

court finds a compelling reason for determining that termination would be detrimental to the child due to certain circumstances. One such circumstance is where “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)

It is the parent’s burden to show that termination would be detrimental. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 401.) “To meet the burden of proof for the section 366.26, subdivision (c)(1)[(B)(i)] exception, the parent must show more than frequent and loving contact or pleasant visits. [Citation.] . . . The parent must show he or she occupies a parental role in the child’s life, resulting in a significant, positive, emotional attachment from child to parent. [Citations.]” (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 953-954.)

To justify application of section 366.26, subdivision (c)(1)(B)(i), the relationship between the parent and child must be sufficiently significant that the child would suffer detriment from its termination. (*In re Angel B.*, *supra*, 97 Cal.App.4th at p. 468.) The juvenile court must consider many variables, including the child’s age, the length of time the child was in parental custody and in foster care, and the effect of interaction between parent and child and the child’s particular needs. (*Id.* at p. 467; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 810-811.) The court must then balance the strength and quality of the parent-child relationship against the security and sense of belonging that a stable family would confer on a child. (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 811.) “If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings.” (*In re Megan S.* (2002) 104 Cal.App.4th 247, 250.)

Mother consistently visited M. for a brief two-month period. Despite mother’s claim of a bond between herself and M., their relationship did not progress beyond weekly monitored visits. By the time of the section 366.26 hearing, mother was visiting M. once a week for one and one-half hours. There was no evidence that during the entire dependency period that mother ever occupied a parental role.

Mother also did not show that M. would benefit from a continuation of their parent-child relationship. M.’s foster parents had given M. a safe and stable home,

something mother had never provided. At the time of the section 366.26 hearing, M. was thriving in her foster parents' care, and had become bonded with them.

Mother contends that she was a victim of unusual circumstances in that M.'s kidnapping prevented a normal reunification process. However, the juvenile court concluded that she had attempted to hide M. from the Department. It is not for us to reweigh the evidence and substitute our judgment for that of the trial court. (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 812; *In re Casey D.*, *supra*, 70 Cal.App.4th at pp. 51-53.) Substantial evidence supports the juvenile court's finding that M. would not suffer if her parental relationship with mother was terminated. The record also supports the court's conclusion that a continuation of mother's relationship with M. was outweighed by the benefit M. would derive from securing a permanent stable adoptive family.

The court appropriately terminated mother's parental rights. Given our disposition, father's appeal also fails.

### **DISPOSITION**

The judgment (order terminating parental rights) is affirmed.

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SUZUKAWA, J.

We concur:

WILLHITE, Acting P.J.

MANELLA, J.